BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF THE PETITION OF DELAWARE DIVISION OF THE PUBLIC ADVOCATE TO REDUCE THE RATES OF REGULATED UTILITIES AS A RESULT OF THE TAX CUTS AND JOBS ACT OF 2017'S REDUCTION IN CORPORATE INCOME TAXES AND OTHER TAX CHANGES(FILED DECEMBER 27, 2017)	)	PSC DOCKET NO. 17-1240

ORDER NO. 9335

AND NOW, this 31st day of January, 2019:

1. On December 22, 2017, the President signed the Tax Cuts and Jobs Act of 2017 ("TCJA"), which became effective on January 1, 2018. The TCJA represents the first significant change in the United States federal tax laws since the 1986 Tax reform Act. Among other things, the TCJA: (1) reduces the federal corporate income tax rate from 35% to 21%; (2) allows full and immediate expensing of short-lived capital investments for five years; and (3) increases the expensing cap from $500,000 to $1 million.

2. The Delaware Public Service Commission ("Commission") has long included in a regulated utility's operating expenses an amount of federal corporate income tax equal to what the utility would pay if it were a stand-alone company. For many years, the Commission has included in regulated utilities' operating expenses an amount of federal corporate income tax equal to 35%, and has deducted from those utilities' rate base a corresponding amount of Accumulated Deferred Income Tax ("ADIT") pursuant to 26 *Del. C.* §102(3).

3. On December 27, 2017, the Delaware Division of the Public Advocate ("DPA") filed a petition with the Commission requesting the

Commission to open a docket to examine whether the current rates of its regulated utilities required reduction as a result of the TCJA. The DPA contended that unless the Commission reduces rates in an amount that corresponds to the benefits that the TCJA confers on the utilities, Delaware regulated utility ratepayers will be paying unjust and unreasonable rates. The DPA requested the Commission to direct each regulated utility to file an estimate of its determination of the TCJA's effects on its cost of service, and to propose a procedure for changing rates to reflect those impacts, on or before March 31, 2018. Additionally, should the Commission determine that any utility's rates require reduction as a result of its review of the utility's submission, the DPA asked the Commission to open a docket for each utility for which it made such a determination, and to establish a procedural schedule for conducting an evidentiary hearing regarding the TCJA's impacts on the utility's operations and existing rates.

4. On January 16, 2018, in Order No. 9166, the Commission granted the DPA's petition. It directed each rate-regulated public utility to file an estimate of its determination of the TCJA's effects on its cost of service for the most recent test year available (including new rate schedules) and to propose a procedure for changing rates to reflect those impacts on or before March 31, 2018. It also ordered that if it determined that a utility's rates required reduction, it would open a new docket for each utility for which it made such a determination and would establish a procedural schedule for conducting an evidentiary hearing regarding the TCJA's impacts on the utility's operations and existing rates. The Commission exempted Delmarva Power & Light Company

("DPL") from this order, instead directing that the effects of the TCJA on DPL's electric and natural gas base rates would be addressed in DPL's pending base rate cases, Docket Nos. 17-0977 and 17-0978.

5. On January 19, 2018, the DPA filed a motion to direct regulated utilities to create regulatory liabilities reflecting the Delaware jurisdictional revenue requirement impacts of the TCJA effective February 1, 2018 while the Commission determines whether a utility's rates required reduction and, if so, the amount of such reduction. The DPA contended that in order to preserve the rate-reducing effects of the TCJA until the Commission approves new rates for the utilities, a regulatory liability must be created; otherwise, the prohibition against retroactive ratemaking would deprive ratepayers of the benefits accruing from the TCJA between its effective date and the date on which Commission-authorized new rates become effective. The DPA noted that the reduction of the federal income tax rate from 35% to 21% benefits ratepayers by reducing one of the elements of a utility's cost of service that goes into calculating a utility's revenue requirement by 14%.

6. On February 1, 2018, in Order No. 9177, the Commission granted the DPA's motion and directed all Delaware rate-regulated public utilities to create regulatory liabilities reflecting the Delaware jurisdictional revenue requirement impacts of the changes in the federal corporate income tax laws, in order to protect ratepayer interests until such time as the TCJA benefits are appropriately reflected in customers' rates and to avoid retroactive ratemaking.

7. On March 22, 2018, Inland Bays Preservation Co., LLC ("Inland Bays") submitted a filing to comply with Commission Order No. 9166. In its filing, Inland Bays represented that it has experienced operating losses since becoming regulated by the Commission; that no deferred tax asset is recognized since Inland Bays has a history of operating losses; that no deferred tax liability for depreciation is recognized since its current tariff rates do not generate sufficient revenue to create taxable income; and that any deferred tax liability, if recorded, would be offset by net operating loss carryforwards. Thus, there is nothing to be returned to its ratepayers as a result of the TCJA.

8. On March 30, 2018, Artesian Wastewater Management, Inc. ("AWMI") submitted a filing to comply with Commission Order No. 9166. In its filing, AWMI represented that it has experienced operating losses since becoming regulated by the Commission; that no deferred tax asset is recognized since AWMI has a history of operating losses; that no deferred tax liability for depreciation is recognized since its current tariff rates do not generate sufficient revenue to create taxable income; and that any deferred tax liability, if recorded, would be offset by net operating loss carryforwards. Thus, there is nothing to be returned to its ratepayers as a result of the TCJA.

9. The DPA and Commission Staff have reviewed AWMI's and Inland Bays' submissions. Commission Staff has also examined the most recent rate cases filed by both companies, and has confirmed that neither company's revenue requirement contained an allowance for federal income tax and that neither company has any excess deferred income taxes to be returned to ratepayers. Commission Staff has confirmed those utilities'

representations that there is nothing to be returned to their ratepayers as a result of the TCJA.

10. On January 31, 2019, the Commission considered AWMI's and Inland Bays' submissions at its regularly-scheduled meeting.

NOW, THEREFORE, BY THE AFFIRMATIVE VOTES OF NO FEWER THAN THREE COMMISSIONERS, IT IS HEREBY FOUND AND ORDERED:

1. The Commission hereby finds that the TCJA has no effect on AWMI's and Inland Bays' current rates. Thus, no changes in the rates charged by either company is required.

2. The Commission reserves jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

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Chairman

Joann T Conaway
Commissioner

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Commissioner

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Commissioner

K F Drexler
Commissioner

ATTEST:

Donna Nickerson
Secretary

THE DELAWARE PUBLIC SERVICE COMMISSION